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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

JASPER STEVENS et al.,

Plaintiffs and Appellants,

v.

LENNAR HOMES OF CALIFORNIA,  
INC. et al.,

Defendants and Respondents.

E067452

(Super.Ct.No. MCC1600272)

OPINION

APPEAL from the Superior Court of Riverside County. Donal B. Donnelly,  
Judge. (Retired Judge of the Imperial Super. Ct. assigned by the Chief Justice pursuant to  
art. VI, § 6 of the Cal. Const.) Affirmed.

Jasper Stevens and Brenda L. Stevens, Plaintiffs and Appellants in pro. per.

Hall Huguenin, Michael J. Pepek, and Rachel C. Witcher for Defendant and  
Respondent Lennar Homes of California, Inc.

Berman, Berman, Berman, Schneider & Lowary, Mark E. Lowary, and Karen E.  
Adelman for Defendant and Respondent Harveston Homeowners Association.

Plaintiffs Jasper and Brenda Stevens are in pro. per. They assert claims — primarily for nondisclosure — arising out of their purchase of a house in 2006. Defendant Lennar Homes of California, Inc. (Lennar) built and sold the house. Defendant Harveston Homeowners Association (Harveston) is the homeowners' association for the development that the house is in.

Lennar and Harveston demurred to the operative complaint. The Stevenses never filed oppositions. They were granted one continuance of the hearing, so they could obtain counsel. They then sought a second continuance, again so they could obtain counsel, and also so they could add a new party. The trial court denied a second continuance and sustained the demurrers.

The Stevenses appeal, contending that the trial court erred by denying them a second continuance. We will hold that the trial court could reasonably find that there was no good cause.

## I

### FACTUAL AND PROCEDURAL BACKGROUND

In April 2016, the Stevenses filed this action against Lennar and Harveston. They allege that Lennar and Harveston failed to disclose the fact that a backflow preventer that was part of the plumbing system of the Stevenses' house would need to be replaced every three to five years.

The operative (first amended) complaint asserted causes of action for (1) failure to disclosure, (2) fraud, and (3) against Harveston only, failure to give due notice of a trustee's sale.

In August 2016, Harveston filed a demurrer. In September 2016, Lennar filed a separate demurrer. The Stevenses did not file oppositions.

In September 2016, at the hearing on Harveston's demurrer, at the Stevenses' request, the trial court granted a one-month continuance so they could obtain counsel.

In October 2016, at the continued hearing on Harveston's demurrer (which was also the initial hearing on Lennar's demurrer), the Stevenses were still in pro. per. They requested a further continuance, in part so they could retain counsel and in part so they could add "Harveston Community Association" as a party.

They stated, generally, "There are clearly deficiencies with the demurrers," but they did not offer any argument as to why the demurrers were not well-taken.

The trial court denied a continuance. It sustained the demurrers without leave to amend. Accordingly, it entered judgments of dismissal.

## II

### THE DENIAL OF A FURTHER CONTINUANCE

The Stevenses contend that the trial court erred by denying them a further continuance.

They rely on Code of Civil Procedure section 437c, subdivision (h), which provides, "If it appears from the affidavits submitted in opposition to a motion for

summary judgment or summary adjudication . . . that facts essential to justify opposition may exist but cannot, for reasons stated, be presented, the court shall deny the motion, or order a continuance . . . , or may make any other order as may be just.” That subdivision applies exclusively to motions for summary judgment. It does not apply to demurrers.

They also rely on California Rules of Court, rule 3.1332, entitled, “Motion or application for continuance of trial.” It provides, in part, that a continuance may be granted based on:

“The addition of a new party if:

“(A) The new party has not had a reasonable opportunity to conduct discovery and prepare for trial; or

“(B) The other parties have not had a reasonable opportunity to conduct discovery and prepare for trial in regard to the new party’s involvement in the case . . . .” (Cal. Rules of Court, rule 3.1332(c)(5).)

This rule applies exclusively to a continuance of a trial. We recognize that it reflects some principles that also apply to continuances more generally, such as that a continuance must be based on “good cause” (Cal. Rules of Court, rule 3.1332(c)) and that “the court must consider all the facts and circumstances.” (*Id.*, rule 3.1332(d).) However, the specific provision for a continuance for the addition of a new party — provided there has not been a sufficient opportunity “to prepare for trial” — is clearly not applicable in the context of a demurrer.

“[T]he trial court has a wide discretion in granting or denying continuances and that its decision will not be disturbed on appeal unless a clear abuse of discretion is shown. [Citations.]” (*Muller v. Tanner* (1969) 2 Cal.App.3d 445, 457.)

Here, the trial court could reasonably find that the Stevenses did not show good cause for a continuance.

To the extent that their request was based on their need to obtain counsel, it came too late. They chose to file the action, in April 2016, without counsel. As of the initial hearing on Harveston’s demurrer, in September 2016, they had already been without counsel for nearly six months. If they felt they needed counsel, this was ample time to obtain it. Nevertheless, the trial court granted them a continuance for one month, specifically for this purpose. As of the continued hearing, however, they *still* did not have counsel. (See *A.G. v. C.S.* (2016) 246 Cal.App.4th 1269, 1289 [continuance to obtain counsel was properly denied when party had already had 52 days to do so].)

The trial court asked them what efforts they had made to obtain counsel. They indicated that they had contacted six attorneys, each of whom had turned down the case. Thus, there was no reason to suppose that, if they were granted yet another continuance, they would succeed in finding counsel. (The fact that the Stevenses are still in pro. per. in this appeal only reinforces this conclusion.)

To the extent that their request was based on their need to add another party, it did not make any sense. The joinder of another party was irrelevant to whether they could state a cause of action against Lennar or Harveston. They could seek to add another party

by moving for leave to amend; if that was denied, they could file a separate action against the other party.

If the Stevenses were aware of additional *facts* relating to the other party that would bolster their causes of action against *Lennar and Harveston*, all they had to do was tell the trial court what those facts were. That way, the trial court could decide whether there was a reasonable possibility that they could state a cause of action by alleging those facts in an amended complaint. (*Quelimane Co. v. Stewart Title Guaranty Co.* (1998) 19 Cal.4th 26, 39 [“If a complaint does not state a cause of action, but there is a reasonable possibility that the defect can be cured by amendment, leave to amend must be granted.”].) Whether the other party was actually *joined* was irrelevant.

Finally, the Stevenses cite to *Security Pacific Nat. Bank v. Bradley* (1992) 4 Cal.App.4th 89, which stated that the imposition of terminating sanctions for violation of a procedural rule is an abuse of discretion “unless the party’s violation of the procedural rule was willful [citations] or, if not willful, at least preceded by a history of abuse of pre-trial procedures, or a showing less severe sanctions would not produce compliance with the procedural rule.” (*Id.* at p. 98, fn. omitted.) That case is not apropos. The Stevenses were not sanctioned for violating a procedural rule. Rather, their case was dismissed because they failed to state a cause of action.

Rather conspicuously, the Stevenses do not argue that the demurrers should have been overruled on the merits; thus, they have forfeited any such contention. (*Hayes v. Temecula Valley Unified School Dist.* (2018) 21 Cal.App.5th 735, 758.)

We therefore conclude that the trial court did not err by denying a further continuance.

### III

#### DISPOSITION

The judgments are affirmed. Lennar and Harveston are awarded costs on appeal against the Stevensens.

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RAMIREZ

P. J.

We concur:

McKINSTER

J.

CODRINGTON

J.